

**Children's Hospital of Michigan and Michigan Association of Police-911. Case 7-CA-31328**

March 28, 1991

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

On January 10, 1991, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing to bargain with the Union following the Union's certification in Case 7-RC-19241. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On February 19, 1991, the General Counsel filed a Motion for Summary Judgment. On February 26, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response on March 12, 1991.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

The complaint alleges that following the Union's certification on August 23, 1990, as the collective-bargaining representative of the Respondent's employees in an appropriate unit, the Respondent, in a memorandum dated December 20, 1990, informed employees that it would decline to recognize and bargain with the Union "pending [a] determination by an appellate authority."<sup>1</sup> It further alleges that the Respondent's conduct in this regard rendered futile any union request for bargaining, and constituted an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

<sup>1</sup> The memo, in relevant part, states as follows:

The National Labor Relations Board (NLRB) in Washington, D.C. issued a ruling on an appeal made by Children's Hospital which questioned the legal legitimacy of the Michigan Association of Police-911 to represent both police officers and security guards. In their ruling, the NLRB upheld a decision by the Regional Director of the NLRB in Detroit, thus certifying M.A.P. as the bargaining unit agent for security officers at CHM.

Following our review of the NLRB decision, Children's administration in conjunction with advice from legal counsel does not believe the decision of the NLRB in Case 7-RC-19241 was correct regarding the application of Section 9(b)(3) and M.A.P.'s status to represent security officers at CHM.

Accordingly, CHM will decline to recognize or bargain with M.A.P. pending the determination by an appellate authority. I will continue to keep you apprised of the appeal process.

The Respondent, in its answer, admits issuing the December 20, 1990 memorandum to employees but denies that it rendered futile any union request for bargaining or constituted a refusal to bargain. As it did in the underlying representation proceeding, the Respondent in its answer denies that the Union is qualified to be certified as an exclusive bargaining representative.

The Respondent's December 20, 1990 memo to employees clearly reveals its intention to challenge the Board's certification of the Union before a U.S. court of appeals, and to refuse to recognize or bargain with the Union until ordered to do so by the courts. In these circumstances, we find merit in the complaint allegation that the Respondent's above-described conduct rendered futile any bargaining request the Union may have made, and amounted to a refusal to bargain with the Union. Further, the Respondent's refusal to bargain is based on a claim, raised in the underlying representation proceeding, that the Union is ineligible for certification as the collective-bargaining representative of its employees under Section 9(b)(3) of the Act because the Union admits both guards and nonguards to membership, and also is affiliated with a union that admits nonguards to membership.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding.<sup>2</sup> We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146,

<sup>2</sup> In its response to the Notice to Show Cause, the Respondent requests reconsideration of the Board's decision in the underlying representation proceeding arguing, as grounds therefor, that the Board failed to consider or articulate a rationale for rejecting the Respondent's argument that the Board should, as a matter of law or in the exercise of its discretion, "withhold certification from public-private guard/non-guard unions" like the Union here. The Respondent's request is denied. It is clear from the Board's decision, in which it found that the Union was not disqualified under Sec. 9(b)(3) from representing the Respondent's employees in the petitioned-for unit, that the Board duly considered all issues and arguments raised by the Respondent in its brief on appeal. See *Children's Hospital of Michigan*, 299 NLRB 430 (1990).

The Respondent has also moved to have the record in the representation proceeding reopened so that it can introduce what it claims is "newly discovered evidence" showing that the Union "possibly represents non-guards" at another private medical facility. The only evidence submitted by the Respondent in support of its motion consists of an affidavit from its assistant administrator of human resources, Eugene Kaminski, in which the latter states that in late August 1990 an unnamed representative of Detroit Medical Center Human Resources told him that "there was a question about [the Union] possibly representing non-guards at Detroit Medical Center." The Respondent's motion is denied. The evidence on which the Respondent relies, consisting of a mere statement from an unidentified individual about the possibility that the Union "might" represent nonguards at a different private medical facility, is simply too remote to justify reopening the record in the representation proceeding.

162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

The Respondent, a Michigan corporation, is a health care institution engaged in the business of providing medical care, products, and services at its office and place of business located at 3901 Beaubien Street, Detroit, Michigan. During the calendar year ending December 31, 1990, a representative period, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000, and during the same period purchased and caused to be shipped to its place of business in Detroit, Michigan, health products and other supplies valued in excess of \$50,000 from points and places located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

###### A. *The Certification*

Following the election held on June 7, 1990, the Union was certified on August 23, 1990, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time guards as defined in the Act employed by the Employer at its facility located at 3901 Beaubien Street, Detroit, Michigan; but excluding supervisors as defined in the Act and all other employees.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

###### B. *Refusal to Bargain*

By its memo of December 20, 1990 to employees, the Respondent rendered futile any bargaining request from the Union, and has, since that date, refused to bargain with the Union. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

##### CONCLUSION OF LAW

By refusing on December 20, 1990, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf. 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Children's Hospital of Michigan, Detroit, Michigan, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with Michigan Association of Police-911, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time guards as defined in the Act employed by the Employer at its facility located at 3901 Beaubien Street, Detroit, Michigan; but excluding supervisors as defined in the Act and all other employees.

(b) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Re-

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Michigan Association of Police-911 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time guards as defined in the Act employed by the Employer at its facility located at 3901 Beaubien Street, Detroit, Michigan; but excluding supervisors as defined in the Act and all other employees.

CHILDREN'S HOSPITAL OF MICHIGAN